Filed 8/23/19 In re I.T. CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re I.T., a Person Coming Under the Juvenile Court Law.	H046382 (Santa Clara County Super. Ct. No. 18JD025135)
SANTA CLARA COUNTY DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES, Plaintiff and Respondent, v. R.T., Defendant and Appellant.	

R.T. (mother) appeals from the dependency order adjudging I.T., her daughter, a dependent child of the juvenile court. (See Welf. & Inst. Code, §§ 300, 395, subd. (a)(1).)[1] Mother asserts that (1) substantial evidence does not support the juvenile court's jurisdiction finding under section 300, subdivision (c) (300(c)) and (2) substantial evidence does not support the juvenile court's findings that notice had been given as required by law and that the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) did not apply because the requisite notices sent to various tribes were incomplete and missing crucial information.

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

We conclude that mother's ICWA challenges have been rendered moot. We otherwise find no basis for reversal. Accordingly, we affirm the disposition order.

I

Procedural History

On May 18, 2018, the Santa Clara County Department of Family and Children's Services (Department) filed a juvenile dependency petition on behalf of I.T., an infant. It alleged that I.T. came within the jurisdiction of the juvenile court under section 300, subdivisions (b)(1) (failure to protect), (c) (serious emotional damage), (g) (no provision for support), and (j) (abuse of sibling).

At the early resolution conference on July 17, 2018, the juvenile court determined that J.G., who was not the biological father of I.T., was the presumed father under Family Code section 7611, subdivision (d) ("The presumed parent receives the child into his or her home and openly holds out the child as his or her natural child"). Mother requested a contested hearing.

A jurisdiction/disposition hearing was finally held on November 6, 2018. Mother did not appear. J.G. (father) and the Department submitted the matter for decision based on the social worker's reports. The final addendum report, dated and filed November 6, 2018, stated that mother had "made no known attempts to contact [the social worker] since 8/13/2018" and that mother's "current whereabouts remain[ed] unknown to the Department."

The juvenile court found that the allegations of the dependency petition filed on May 18, 2018, as amended, were true and that I.T. was a person described by section 300, subdivisions (b), (c), (g), and (j). It adjudged I.T. a dependent child of the court. It adopted the Department's recommendations. The court found that notice had been given as required by law and that ICWA did not apply.

The juvenile court further found by clear and convincing evidence that I.T.'s welfare required her to be taken from parental physical custody. The court ordered

reunification services for father. No reunification services were ordered for mother. The court found that two reunification bypass provisions applied to mother. (See § 361.5, subds. (b)(11), (b)(13)[2]).

II

Discussion

A. *The Juvenile Court's Jurisdiction Finding under Section 300*(*c*)

1. *Background*

After the matter was submitted, the trial court found true the following jurisdictional allegations under section 300(c). On April 16, 2018, the juvenile court granted the Department's request for a protective custody warrant to protect I.T. from mother's "chronic and active substance abuse, untreated mental health issues, and history of neglecting her older children" and from father's "history of substance abuse and his difficulty in protecting the child from the mother." On April 18, 2018, at the Department's request, the juvenile court "dismissed the warrant petition without prejudice" because mother and father had agreed to a safety plan. The plan required mother to move out of the home, not to have any unsupervised contact with I.T., and to participate in drug and mental health treatment. The plan required father to protect I.T. and ensure that the safety measures were implemented "without court or formal

[2] Section 361.5 provides in pertinent part: "Reunification services need not be provided to a parent . . . when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent. [¶] . . . [¶] (13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by [s]ection 358.1 on at least two prior occasions, even though the programs identified were available and accessible."

governmental intervention." Since then, mother had "repeatedly arrived unannounced and uninvited at . . . father's home" and "demand[ed] to take the baby." Father had "repeatedly engaged in verbal and physical altercations with the mother which [had] escalated" and required "repeated law enforcement intervention."

On May 16, 2018, mother entered father's home uninvited. She had a suitcase with her, and in front of I.T., father picked up and threw the suitcase. Mother grabbed I.T.'s car seat with I.T. in it and started to run out of the house. Father tried to stop mother by grabbing her hair and pulling her toward him. Mother dropped the car seat with I.T. in it. "This was the second incident in which . . . mother tried to take the child and . . . father grabbed and pulled . . . mother by the hair to keep her from taking the child. Exposure to domestic violence place[d] the child at risk of physical and emotional harm in [their] physical custody."

Also on May 16, 2018, Morgan Hill police "placed the infant child, [I.T.], into protective custody" because (1) mother "abuse[d] multiple drugs and demonstrate[d] erratic behaviors consistent with serious untreated mental health problems," (2) father "abuse[d] drugs and [was] unable to take steps to protect the child from the mother without frequent law enforcement intervention," and (3) mother and father "involve[d] the child in mutual physical domestic violence altercations."

Mother now argues that substantial evidence does not support the juvenile court's assumption of jurisdiction under section 300(c). A child comes within the jurisdiction of the juvenile court under section 300(c) if "[t]he child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent . . . ."

2. *Analysis*

" 'In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.]

In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.' [Citations.]" (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

" 'When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.' (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)" (*In re I.J.* (2013) 56 Cal.4th 766, 773.) "As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate. [Citations.]" (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 979.)

Mother does not challenge the sufficiency of the evidence to support the juvenile court's other jurisdiction findings under subdivisions (b), (g), and (j) of section 300. She does not dispute that a determination that the evidence was insufficient to support jurisdiction under section 300(c) would not affect the juvenile court's dependency jurisdiction over I.T. Nevertheless, mother urges this court to exercise its discretion to reach the merits of her claim because the challenged jurisdiction finding could have stigmatizing consequences for her and could impact the current dependency proceedings, potential family law proceedings concerning the custody of I.T., and future dependency proceedings concerning any child born after I.T. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763; see also *In re D.P.* (2015) 237 Cal.App.4th 911, 917 (*D.P.*).)

We briefly consider mother's specific arguments. Mother disputes that I.T., who was just a baby, suffered serious emotional harm as a result of father's and her arguing in May of 2018, although she concedes that I.T. got "caught up" in their altercation. Mother

also maintains that "there was no future risk of exposing the minor to domestic violence" because father and she had only a brief relationship, which was "over long before" the jurisdiction/disposition hearing. She cites father's testimony on July 17, 2018 that they were not in a relationship anymore.

As evident from the statutory language, jurisdiction under section 300(c) exists where the child is "at substantial risk of suffering serious emotional damage . . . as a result of the conduct of the parent" as well as where "[t]he child is suffering serious emotional damage . . . as a result of the conduct of the parent." Thus, even if a child has not yet suffered emotional harm, a child who is at substantial risk of suffering serious emotional damage due to parental conduct comes within the juvenile court's jurisdiction under section 300(c). (See *D.P.*, *supra*, 237 Cal.App.4th at p. 919.)

The jurisdiction/disposition report and the addendum reports were admitted into evidence at the jurisdiction/disposition hearing. That evidence did not necessarily reflect that "there was no future risk of exposing the minor to domestic violence" because her relationship with father was over, as asserted by mother. Father's testimony on July 17, 2018, the date of the early resolution conference and a hearing on the competing presumed-father presumptions, was not part of the evidence before the trial court at the jurisdiction/disposition hearing on November 6, 2018. In any case, mother and father were not living together at the time of the conduct that led to these dependency proceedings.

The evidence before the court at the jurisdiction/disposition hearing showed the following facts. Mother tested positive for methamphetamine, amphetamine, and marijuana at the time of I.T.'s birth. Mother admitted to using heroin during her first month of pregnancy. In addition to an extensive history of substance abuse, mother had been previously diagnosed with schizophrenia and had significant untreated mental illness. But mother did not believe that she had mental health issues or a substance abuse problem.

Before I.T. was born, mother lost custody of four older children due to her substance abuse and failure to protect them from exposure to domestic violence. Mother and H.M., the man to whom she was legally married, had had a volatile relationship. They had engaged in physical and verbal intimate partner violence on a daily basis, and mother's four older children had been scared by it. I.T.'s four older half-siblings were placed into protective custody in Arizona on September 12, 2015. It appears that in 2018, an Arizona court terminated mother's and H.M.'s parental rights as to three of those children; the fourth child had a different father.

The jurisdiction/disposition report disclosed that in February of 2018, a no-contact temporary restraining order was issued against mother in protection of I.T.'s maternal grandparents. After I.T. was born and placed into protective custody, a voluntary safety plan was established with father, and I.T. was placed into his care. The dependency intake social worker determined that mother was unable to provide a safe environment for I.T. due to her untreated mental health and substance abuse issues. Part of the safety plan required father not to allow mother to be alone with I.T. Mother's behavior giving rise to the present dependency proceedings occurred subsequently.

On May 16, 2018, mother went to father's home and asked to spend time alone with I.T. She acknowledged that after father refused to allow that, she suddenly attempted to leave the residence with I.T. still in her car seat. Mother grabbed the car seat with I.T. in it and ran toward the front door. When father intervened by pulling her toward him by her hair, mother dropped the car seat with I.T. in it. Mother and father began arguing. This was the second incident in which father grabbed mother by the hair and pulled her toward him to prevent her from leaving his home with I.T.

Police responded to father's home on May 16, 2018. An officer determined that father was an inappropriate caregiver for I.T. "due to his inability to protect the child . . . from [mother] without police intervention." Mother and father admitted to him that "they occasionally argue and physically fight with each other while holding the child . . . ."

The Morgan Hill Police Department had responded to father's home "multiple times" since I.T. was born "due to the mother . . . attempting to take the child . . . ."[3] I.T. was placed into protective custody after mother was arrested for outstanding warrants.

Contrary to mother's assertion, there was no reason to believe that mother's conduct that put I.T. at risk would not continue in the future. In mid-August 2018, the social worker referred mother to Substance Use Treatment Services for an assessment and explained to mother that she could be referred to inpatient substance abuse treatment only by completing a substance abuse assessment. The social worker had referred mother for a substance abuse assessment "on numerous occasions." Mother told the social worker that she did not need substance abuse treatment. When the social worker attempted in late August of 2018 to reach mother at her last known telephone number, there was no answer.

In the seventh addendum report dated September 20, 2018, the social worker stated that mother had not "addressed or acknowledged" her mental health and substance abuse issues. The social worker further stated that mother's "refusal to acknowledge or address her mental health and substance abuse issues places [I.T.] at a high risk of experiencing similar emotional abuse and neglect experienced by [I.T.'s four] half-siblings . . . ." A subsequent addendum report disclosed that the whereabouts of mother and her contact phone number were then unknown. The final addendum report, dated November 6, 2018, indicated that the social worker had been unable to contact mother at her last known phone number and that mother had not contacted the social worker since August 13, 2018.

Mother's arguments do not establish the insufficiency of the evidence to support a jurisdiction finding under section 300(c). We decline to engage in any further analysis of

[3] The Arizona Department of Child Safety warned the social worker in this case that mother had previously made detailed plans to abduct I.T.'s half-siblings and advised that a high level of supervision should be provided during mother's visits with I.T.

the substantiality of the evidence to support an assumption of jurisdiction under section 300(c) since the juvenile court indisputably had dependency jurisdiction over I.T.

B. *Alleged Failures to Comply with ICWA's Notice Provisions*

1. *Contentions*

Mother argues that the Department's investigation into I.T.'s Indian heritage was inadequate and resulted in defective notices being served on the relevant tribes. She contends that substantial evidence does not support the juvenile court's findings that notice was given as required by law and that ICWA did not apply. She maintains that the court's error as to the Department's compliance with ICWA's notice requirements was not harmless.

Mother complains that "the Department's investigatory efforts to obtain the necessary biographical [information] about [I.T.'s] Cherokee and Apache heritage fell fa[r] short." She asserts that "[t]he ICWA-030 Notices were essentially blank and rife with errors."[4]

Mother points out that any interview of her is not documented in the Department's reports and that I.T.'s maternal grandparents were "known to the Department and available for further interviews to obtain missing biographical and historical family information." She suggests that I.T.'s maternal aunt and her husband were also available to discuss I.T.'s Indian heritage, as apparent from I.T.'s placement with the aunt (and her husband) in July 2018 and the presence of the aunt's husband at a hearing.

It is undisputed that the Department had a duty to send proper notices to the relevant Indian tribes. The Department acknowledges that the ICWA notices were deficient. The Department states that it "can and will cure any deficiencies if future proceedings can result in a recommendation to remove the child from her father." However, it argues that the issue of ICWA compliance is now moot because the juvenile

[4] The Judicial Council has adopted form ICWA-030, entitled "Notice of Child Custody Proceeding for Indian Child (Indian Child Welfare Act)," for mandatory use.

court has returned I.T. to father's custody.[5] The Department also contends that the deficiencies in the ICWA notices were harmless error.

At the six-month review hearing held on May 28, 2019, the juvenile court continued I.T. as a dependent child of the court and ordered her "into the care, custody and control of [father], with supervision by the Department." Placement of I.T. with father was ordered as the permanent plan. The court ordered that I.T. and father receive family maintenance services. In her reply brief, mother acknowledges that "placement with a parent, which appears to have occurred here in late May 2019 . . . may nullify the need to provide notice to the Indian tribes that are potentially affiliated with the minor."

2. *Background*

In an addendum to the initial hearing report (see § 319), it was stated that during an interview on May 21, 2018, mother reported that she believed she had Native American ancestry and that her possible tribe might be in the area of Eloy, Arizona. On May 22, 2018, mother filed a parental notification of Indian status, indicating that she might have Indian ancestry in Arizona but the tribe was unknown. The jurisdiction/disposition report, dated June 22, 2018, disclosed that mother thought that she had Native American ancestry because I.T.'s maternal grandfather had Native American ancestry. It was reported that I.T.'s maternal grandfather did not believe that he had Native American ancestry, but he thought that the maternal relatives may have "Indian blood of Cherokee" since the maternal relatives were born in Arizona. The report also disclosed that I.T.'s maternal grandmother had reported that she did not have Native American ancestry. I.T.'s maternal aunt had reported that "as far as she knows, the maternal relatives [did] not have Native American ancestry." The aunt indicated that

[5] On our motion and on the Department's motion, we augment the appellate record to include the May 28, 2019 minutes, which reflect the juvenile court's findings and orders made at the six-month review hearing held on that date. (Cal. Rules of Court, rules 8.155(a)(1)(A), 8.410(b)(1).) All further references to rules are to the California Rules of Court.

I.T.'s maternal grandfather used to say as a joke that they were Apache. The notices (form ICWA-030), which were sent to multiple tribes in June 2018, did not provide complete information regarding I.T.'s maternal lineal ancestors, often stating with respect to specified information, "No information available."

3. *Governing Law*

ICWA, "establishes federal standards that govern state-court child custody proceedings involving Indian children. [Citations.]" (*Adoptive Couple v. Baby Girl* (2013) 570 U.S. 637, 642, fn. omitted.) It was enacted to address " 'the consequences . . . of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes.' [Citation.]" (*Ibid.*) "[ICWA] establishes minimum federal standards a state court must follow when removing an Indian child from his or her family. Congress has defined 'Indian child' for these purposes as 'any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.' ([25 U.S.C.] § 1903(4).)" (*In re Abbigail A.* (2016) 1 Cal.5th 83, 88 (*Abbigail A.*).)

ICWA mandates that "[i]n any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe." (25 U.S.C. § 1911(b).) It also commands that "[i]n any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding." (25 U.S.C. § 1911(c).)

"In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention." (25 U.S.C. § 1912(a).) "If the identity or location of the tribe cannot be determined, notice must be sent to the Bureau of Indian Affairs (BIA). [(25 U.S.C. § 1912(a).)] No hearing on foster care placement or termination of parental rights may be held until at least 10 days after the tribe or BIA has received notice. (*Ibid*.)" (*In re W.B.* (2012) 55 Cal.4th 30, 48.)

"ICWA's notice requirements serve two purposes. First, they facilitate a determination of whether the child is an Indian child under ICWA. [Citation.]" (*In re Isaiah W.* (2016) 1 Cal.5th 1, 8 (*Isaiah W.*).) "Second, ICWA notice ensures that an Indian tribe is aware of its right to intervene in or, where appropriate, exercise jurisdiction over a child custody proceeding involving an Indian child. [Citations.]" (*Ibid*.)

ICWA requires that "[a]ny party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." (25 U.S.C. § 1912(d).) ICWA establishes that "[n]o foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." (25 U.S.C. § 1912(e).) In addition, "[n]o termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of

the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." (25 U.S.C. § 1912(f).)

"Any placement of an Indian child must follow the preferences set out in ICWA. ([25 U.S.C.] § 1915.) Finally, ICWA authorizes collateral attacks: When a court removes an Indian child or terminates parental rights in violation of ICWA, 'any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action . . . .' (*Id*., § 1914.)" (*Abbigail A.*, *supra*, 1 Cal.5th at p. 91.)

California law implements ICWA. It provides that "[i]n all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act the court shall . . . comply with the federal Indian Child Welfare Act of 1978 and other applicable federal law."[6] (§ 224, subd. (b).) "Any Indian child, the Indian child's tribe, or the parent or Indian custodian from whose custody the child has been removed, may petition the court to invalidate an action in an Indian child custody proceeding for foster care or guardianship placement or termination of parental rights if the action violated [s]ection 1911, 1912, or 1913 of the federal Indian Child Welfare Act of 1978." (§ 224, subd. (e).)

California law defines "Indian child custody proceeding" to include "a hearing during a juvenile court proceeding brought under [the Welfare and Institutions Code] involving an Indian child, other than an emergency proceeding under [s]ection 319, that

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[6] ICWA defines a "child custody proceeding" to include (1) "any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand," (2) "any action resulting in the termination of the parent-child relationship," (3) "the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement," and (4) "the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption." (25 U.S.C. § 1903(1).)

may culminate" in an outcome of foster care placement, termination of parental rights, preadoptive placement, *or* adoptive placement. (§ 224.1, subd. (d)(1); see *ante*, fn. 6.) It provides that "[a]s used in connection with an Indian child custody proceeding, the term[] . . . 'parent' shall be defined as provided in [s]ection 1903 of the federal Indian Child Welfare Act." (§ 224.1, subd. (c).) Under ICWA, " 'parent' means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom." (25 U.S.C. § 1903(9).)

California law establishes that "[t]he court [and the] county welfare department . . . have an affirmative and continuing duty to inquire whether a child for whom a petition under [s]ection 300 . . . may be or has been filed, is or may be an Indian child" (§ 224.2, subd.(a)) and that "[t]he duty to inquire begins with the initial contact . . . ." (*Ibid.*) "There is reason to know a child involved in a proceeding is an Indian child [when] . . . [¶] [a] person having an interest in the child . . . informs the court that the child is an Indian child." (§ 224.2, subd. (d).)

"If the court [or the] social worker . . . has reason to believe that an Indian child is involved in a proceeding, the court [or the] social worker . . . shall make further inquiry regarding the possible Indian status of the child . . . as soon as practicable." (§ 224.2, subd. (e).) The duty of further inquiry includes, but is not limited to, "[i]nterviewing the parents . . . and extended family members to gather the information required [to be included in notices as specified] in paragraph (5) of subdivision (a) of [s]ection 224.3." (§ 224.2, subd. (e)(1); see rule 5.481(a)(4)(A);[7] see also 25 U.S.C. § 1903(2) [ICWA's definition of "extended family member"].) "If there is reason to know . . . that the child

[7] Rule 5.481(a)(4)(A) provides in part: "If the social worker . . . or petitioner knows or has reason to know that an Indian child is or may be involved, that person or entity must make further inquiry as soon as practicable by: [¶] (A) Interviewing the parents, Indian custodian, and 'extended family members' as defined in 25 United States Code sections 1901 and 1903(2), to gather the information listed in Welfare and Institutions Code section 224.2(a)(5) . . . , which is required to complete the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030)."

is an Indian child, the party seeking foster care placement shall provide notice in accordance with paragraph (5) of subdivision (a) of [s]ection 224.3." (§ 224.2, subd. (f).)

Under California law, "[i]f the court [or] a social worker . . . knows or has reason to know . . . that an Indian child is involved, notice pursuant to [s]ection 1912 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) shall be provided for hearings that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement . . . ." (§ 224.3, subd. (a).) Certain information must be included in the notice (§ 224.3, subd. (a)(5)), and a notice must be sent by "the party seeking placement of the child" to, among others, "[a]ll tribes of which the child may be a member or citizen, or eligible for membership or citizenship" unless the "[a] tribe has made a determination that the child is not a member or citizen, or eligible for membership or citizenship" or the court has determined "the child's tribe in accordance with subdivision (e) of [s]ection 224.1, after which notice need only be sent to the Indian child's tribe." (§ 224.3, subd. (a)(3).) Under ICWA as implemented by federal regulations and California law, notices must include known information about the child's direct lineal ancestors. (See 25 C.F.R. § 23.111(d)(2) ["All names known (including maiden, married, and former names or aliases) of the parents, the parents' birthdates and birthplaces, and Tribal enrollment numbers if known"] & (d)(3) ["If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents"]; § 224.3, subd. (a)(5)(C) ["All names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married, and former names or aliases, as well as their current and former addresses, birth dates, places of birth and death, tribal enrollment information of other direct lineal ancestors of the child, and any other identifying information, if known"].)

"If the court makes a finding that proper and adequate further inquiry and due diligence as required in [section 224.2] have been conducted and there is no reason to

know whether the child is an Indian child, the court may make a finding that [ICWA] does not apply to the proceedings, *subject to reversal based on sufficiency of the evidence*. The court shall reverse its determination if it subsequently receives information providing reason to believe that the child is an Indian child and order the social worker or probation officer to conduct further inquiry pursuant to [s]ection 224.3." (§ 224.2, subd. (i)(2), italics added.) "Notwithstanding a determination that [ICWA] does not apply to the proceedings, if the court, social worker, or probation officer subsequently receives any information required by [s]ection 224.3 that was *not previously available or included in the notice* issued under [s]ection 224.3, the party seeking placement shall provide the additional information to any tribes entitled to notice under [s]ection 224.3 and to the Secretary of the Interior's designated agent." (§ 224.2, subd. (j), italics added.)

Where mandated information is missing from the notices sent to the relevant tribes due to the failure of the social worker to make reasonable inquiries of parents and extended family members, the error, if challenged, usually requires reversal to allow compliance with ICWA's notice provisions. (See e.g., *In re Breanna S.* (2017) 8 Cal.App.5th 636, 651-655 (*Breanna S.*); see also § 224, subd. (e); 25 U.S.C. § 1914; *Isaiah W., supra*, 1 Cal.5th at p. 11 ["any finding of ICWA's inapplicability before proper and adequate ICWA notice has been given is not conclusive"]; cf. *In re I.W.* (2009) 180 Cal.App.4th 1517, 1529 ["The notice required by the ICWA must contain enough information to provide meaningful notice"], 1532 [finding that "any deficiencies in the notices were de minimus and not prejudicial"].) "[V]igilance in ensuring strict compliance with federal ICWA notice requirements is necessary because a violation renders the dependency proceedings, including an adoption following termination of parental rights, vulnerable to collateral attack if the dependent child is, in fact, an Indian child. [Citation.]" (*Breanna S., supra*, at p. 653.)

3. *Analysis*

In this case, once the juvenile court placed I.T. with father at the six-month review hearing, the Department was no longer seeking to put her in a foster-care, preadoptive, or adoptive placement or to terminate parental rights. The notice provisions of ICWA and correlative Californian law no longer applied unless and until there was a proceeding seeking to remove I.T. from father and place her in foster care or terminate parental rights. (See 25 U.S.C. §§ 1903(1), 1911(a) & (c), 1912(a); 25 C.F.R. § 23.111; §§ 224.2, subds. (f), (j), 224.3, subds. (a), (b); see also *In re K.L.* (2018) 27 Cal.App.5th 332, 339 ["By placing the minor with his previously noncustodial, nonbiological presumed father, the Agency was not seeking to place the minor in foster care or to terminate parental rights"].)

Mother's challenges under ICWA were rendered moot when I.T. was ordered into father's care, custody, and control because there is no effectual relief that this court may grant. (See *Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 132.) It is settled that "[t]he duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." (*Mills v. Green* (1895) 159 U.S. 651, 653; see *Paul*, *supra*, at p. 132.)

DISPOSITION

The November 6, 2018 disposition order is affirmed.

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ELIA, J.

WE CONCUR:

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GREENWOOD, P. J.

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PREMO, J.

In re I.T.; *DFCS v. R.T.*
H046382